A

AB CONNECTORS LTD

v.

PSC NAVAL DOCKYARD SDN BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[SUIT NO: D8-22-712-2005]
15 JULY 2008

C ***CIVIL PROCEDURE:*** *Costs - Taxed costs - Awarding solicitor taxed costs - Whether solicitor entitled to charge cost - Whether fair and reasonable for solicitor to charge such fee given that solicitor receives retainer fee - Whether defendant company entitled to question quantum and propriety of bill at taxation - Whether review should be allowed*

D This was an appeal against the decision of the deputy registrar in awarding the defendant's solicitor taxed costs at RM3,780. The taxed cost was in respect of work done on an O. 14 application of the plaintiff's. The defendant company argued that the E defendant's solicitor was not entitled to charge any cost by reason that they were on the defendant's retainer of RM25,807.05 per month. The retainer was for work done for three companies within a group of which the defendant was one. According to the defendant company, the cost of opposing any proceeding should F be work performed within the retainer fee of RM25,807.05 per month, therefore the solicitor should not be paid a cent more. The question whether any fee was chargeable would have to be determined on the basis of whether it was fair and reasonable for the solicitor to charge such a fee given that the solicitor had been G receiving the said retainer of RM25,807.05 per month.

Held (allowing review with costs):

(1) Where there is a dispute as to whether an advocate and solicitor is entitled to charge any further fee apart from the H retainer fee, reference will have to be made to the retainer to determine whether that fee is included in the retainer. The parties in this proceeding were unable to provide the court with any specific letter specifying the scope of work required under the retainer save for the correspondence entered into I after the dispute. The dispute herein only involved work undertaken to defend an O. 14 application which did not go for hearing. It should come reasonably within the ambit of

work to be done under the general retainer of RM25,807.05 on the reasoning that the advocate and solicitor who received a remuneration was reasonably expected to do some work for the company. The defendant company was entitled to question not only the quantum but also the propriety of the bill at taxation before the deputy registrar. (paras 7, 8, 9 & 10)

Legislation referred to:
Rules of the High Court 1980, O. 14

For the plaintiff - Absent; M/s Khaw & Partners
For the defendant - R Thayalan; M/s R Thayalan
G Gowri; M/s Thanggaya Khoo & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Kang Hwee Gee J:

This Is My Oral Judgment: ***(ex-tempore)***

[1] This is an appeal against the decision of the deputy registrar in awarding the defendant's solicitor taxed costs at RM3,780. The cost for getting up was taxed at RM2,500 and the other incidental cost was taxed at RM1,000 on a lump sum basis.

[2] The costs arose from an O. 14 application of the plaintiff's claim for goods sold and delivered. The defendant's solicitor resisted the claim but did not get to defend it as the defendant had by then appointed a new solicitor to take over from him. The taxed cost was in respect of work done on the O. 14 before the new solicitor took over.

[3] Mr. R. Thayalan for the defendant company (the present counsel):

i. The defendant's previous solicitor is not entitled to charge any cost by reason that they are on the defendant's retainer of RM25,807.05 per month. The retainer was for work done for three companies within a group of which the defendant was one. The cost of opposing any proceeding should be work performed within the retainer fee of RM25,807.05 per month. The solicitor therefore should not be paid a cent more.

[4] Cik G. Gowri (the previous counsel for the defendant):

i. The taxation of the bill of costs was made at the instance of the defendant itself. We had submitted our bill of costs in respect of O. 14 but had been advised by the defendant to submit to taxation. We could not agree on the costs as the letters show:

Letter dated 12 December 2005 reads:

Your Ref: TZ/MRT/PER/05/N
Our Ref: AI/PSCI/4253/01/2005/(C)A

BY FAX/POST **FAX NO. 03-20322769**

12 December 2005

Messrs. Thanggaiya Zawawi & Co
3rd Floor, Ming Building
Jalan Bukit Nanas
50250 Kuala Lumpur.

Dear Sirs,

Re: Litigation Matters Concerning:

1. PSC Industries Berhad
2. Penang Shipbuilding Construction Sdn Bhd
3. PSC-Naval Dockyard Sdn Bhd

Reference is made to your letter dated 28 November 2005 and 5 December 2005.

Firstly, we wish to point out that Mr Thanggaya has not informed us of his free dates to meet up for a meeting as you have suggested in your letter dated 14 November 2005. Please refer to your letter wrongly dated 21 September 2005.

Secondly, please be informed that our client is not agreeable to the sums you have proposed especially in view of the fact that such a high monthly retainer was paid to you and they are not fully aware of what work came under and did not come under the monthly retainer. The list of work that you have listed in your letter dated 14 November 2005 is very wanting in particulars. We have therefore been instructed to inform you that our clients request for all the bills for the cases under your care to be taxed.

To ensure our clients' interests are protected and that we may act on the matters that require attention immediately, our clients have suggested that all the files be transferred to us immediately whereupon they will furnish you with a letter of undertaking to pay your taxed costs for all the matters under your care.

Please let us know immediately whether you are agreeable to the same.

Yours faithfully,

Sgd.

c.c. clients

Letter dated 14 December 2005 reads:

PSC Industries Berhad

14 December 2005

Messrs Thanggaiya Zawawi & Co
3rd Floor, Ming Building
Jalan Bukit Nanas
50250 Kuala Lumpur.

Dear Sirs

Transfer Of All Litigation Matters To Messrs Azzat & Azzat

Reference is made to Messrs. Azzat & Izzat's letter dated 24 October 2005.

As intimated earlier, we have appointed Messrs. Azzat & Izzat to take over from you the conduct of all litigation and any other matters that you may have handled and are handling for our company and any of our subsidiary companies. We would be grateful if you could immediately forward them all the physical files with a report on the status of each of the files to ensure a smooth take over of the files.

We understand you have indicated to our present solicitors that you will only transfer the files to them upon payment of your professional fees. We have studied the sums you have claimed for each file and regret that we are not agreeable to them especially since a substantial retainer was paid to you each month. Until today, we do not have a

clear and accurate picture as to what work was carried out under the retainer. The details you have set out in your letter dated 14 November 2005 are still lacking in crucial particulars, as an example, when these agreements were perused, what these agreements were, etc. Therefore in fairness to both parties we think it best that all your bills for the legal matters you are claiming legal fees be taxed.

We understand your concerns about the bills and wish to reassure of our commitment to ensure that your bills will be paid upon completion of the taxation (inclusive of any reviews that either party may make). We therefore undertake to pay the bills of the matters under your care that have been taxed by the Court within 14 days of being served with the final allocatur (after it has been completely reviewed, if applicable).

In view of this, we would be grateful if you could attend to the transfer of the files to our present solicitors as soon as possible.

Thank you.

Yours faithfully

PSC Industries Berhad

Sgd.

Laksamana Madya (R) Dato' Seri Ahmad Ramli
bin Hj Mohd Nor
Group Managing Director.

Letter dated 18 January 2006 reads:

PSC-Naval Dockyard Sdn Bhd

18 January 2006

Messrs. Thanggaiya Zawawi & Co.
3rd Floor, Ming Building
Jalan Bukit Nanas,
50250 Kuala Lumpur.

Dear Sirs,

Re: Transfer of All Litigation Matters to Messrs. Azzat & Izzat

Reference is made to Messrs. Azzat & Izzat's letter dated 24 October 2005.

As intimated earlier, we have appointed Messrs. Azzat & Izzat to take over from you the conduct of all litigation and any other matters that you may have handled and are handling for our company and any of our subsidiary companies. We would be grateful if you could immediately forward them all the physical files with a report on the status of each of the files to ensure a smooth take over of the files.

We understand you have indicated to our present solicitors that you will only transfer the files to them upon payment of your professional fees. We have studied the sums you have claimed for each file and regret that we are not agreeable to them especially since a substantial retainer was paid to you each month. Until today, we do not have a clear and accurate picture as to what work was carried out under the retainer. The details you have set out in your letter dated 14 November 2005 are still lacking in crucial particulars, as an example, when these agreements were perused, what these agreements were, etc. Therefore in fairness to both parties we think it best that all your bills for the legal matters you are claiming legal fees be taxed.

We understand your concerns about the bills and wish to reassure of our commitment to ensure that your bills will be paid upon completion of the taxation (inclusive of any reviews that either party may make). We therefore undertake to pay the bills of the matters under your care that have been taxed by the Court within 14 days of being served with the final allocatur (after it has been completely reviewed, if applicable).

In view of this, we would be grateful if you could attend to the transfer of the files to our present solicitors as soon as possible.

Thank you.

Yours faithfully.

Sgd.

Dato' Seri Ahmad Ramli Haji Mohd Nor
Group Managing Director

c.c: Messrs. Azzat & Izzat

ii. The 1st letter clearly undertakes to pay the solicitor's taxed costs. The 1st letter from the defendant's new solicitor says that the client instructs the bill be taxed and that the client will pay the taxed costs. The 2nd letter from the client confirms that the bills are to be taxed and gives a clear undertaking that within 14 days after they are served that they would pay the bill. The 3rd letter from the defendant proper confirming the same.

[5] Reply by Mr. R. Thayalan:

i. The three letters say more. What they say in essence is that the defendant did not know precisely "what are the work carried out under the retainer". The taxation proposed was to expedite matters so that work can be assessed. But there are two other letters dated 10 November 2005 from Messrs Azzat & Izzat (the new solicitor) which predates the letters produced by the previous solicitor, *supra*, seeking clarification from the previous solicitor as to the kind of services and work under the monthly retainer and all the works that have been done since their appointment. The reply dated 14 November 2005 received by the defendant's new solicitor gave the scope of work that it undertook under the retainer in so far as the claim in this present taxation is concerned reads "besides attending to and taking instructions on most of the litigation cases involving the above companies (hereinafter referred to as "the group")."

ii. Now refer to pp. 234 to 263 (invoices produced before the deputy registrar) show that the retainer fee of RM25,807.05 includes "to all attendances in court".

Findings And Decision

[6] A party is free to retain an advocate and solicitor on a retainer basis. The scope of work to be done by the advocate and solicitor would have to be set out in the retainer and may include all contentious and non-contentious matters required to be done by the advocate and solicitor.

[7] Where a dispute arise as to whether an advocate and solicitor is entitled to charge any further fee apart from the retainer fee, reference would have to be made to the retainer to determine whether that fee is included in the retainer.

[8] The parties in this proceeding are unable to provide the court with any specific letter specifying the scope of work required under the retainer save for the correspondence entered into after the dispute. The question whether any fee is chargeable has to be determined on the basis of whether it is fair and reasonable for the solicitor to charge such a fee given that the solicitor had been receiving the retainer of RM25,807.05 per month.

[9] The dispute only involves work undertaken to defend an O. 14 application which did not go for hearing. It should in my view comes reasonably within the ambit of work to be done under the general retainer of RM25,807.05 on the reasoning that the advocate and solicitor who received a remuneration is reasonably expected to do some work for the company.

[10] The fact that the defendant had proposed that the bill be taxed should not be construed as an admission on its part to pay the defendant's taxed bill of costs. The defendant is entitled to question not only the quantum but also the propriety of the bill at taxation before the deputy registrar.

[11] The review is allowed with costs.